BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 265 19 97

Bill H _____ S 337 Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	_____	___C	Hearing Date(s)	_____	___C
	4/2	✓C		2/17	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	4/2	✓C	Date Out 2/19		✓

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

4/28 SIGNED BY GOVERNOR
CHAPTER NUMBER 411
EFFECTIVE DATE: 04/28/97

SB 337 INTRODUCED BY GROSFIELD, ET AL. *LC0959 DRAFTER: COLHOUN*

RATIFY A RESERVED WATER RIGHTS COMPACT AMONG THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION, AND THE UNITED STATES OF AMERICA

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO NATURAL RESOURCES		
2/17	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO NATURAL RESOURCES		
4/02	HEARING		
4/03	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	93	6
4/05	3RD READING CONCURRED	91	8
	RETURNED TO SENATE		
4/10	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/11	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 265		
	EFFECTIVE DATE: 10/01/97		

SB 338 INTRODUCED BY GROSFIELD *LC0760 DRAFTER: NISS*

REQUIRING LICENSURE OF CERTAIN GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/12	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	48	2
2/26	3RD READING PASSED	44	5
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/17	REREFERRED TO STATE ADMINISTRATION		
3/27	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	81	18
4/09	3RD READING CONCURRED	84	15
	RETURNED TO SENATE WITH AMENDMENTS		
4/15	2ND READING AMENDMENTS CONCURRED	49	0
4/16	3RD READING CONCURRED AS AMENDED	45	5
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		

Senate BILL NO. 337

INTRODUCED BY Goe Field Swanson Swysgood Hargrove Jergeson Jenkins McCarvel Pinsoneault

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION, AND THE UNITED STATES OF AMERICA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Chippewa Cree Tribe-Montana compact ratified.** The compact entered into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see, United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. §666 (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions

of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, 721 F.2d 1189; and

WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Chippewa Cree Tribe within the State of Montana; and

WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have authority to negotiate this Compact pursuant to §1(a), of Article VI of the Tribal Constitution; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States;

NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water rights claims of the Chippewa Cree Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one

foot and is equivalent to 43560 cubic feet.

2. "Adverse effect" means an interference with the reasonable exercise of a water right.

3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).

5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of Article IV of this Compact.

8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

11. "Bypass" means the designated streamflow around or through a diversion.

12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

11. "Change in use" means a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this Article.

15. "Continuously store" or "continuous storage" means the right to fill and then continually refill the active storage capacity of an impoundment from the natural flow of the source on which the impoundment is located.

16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix 2.

18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6 showing drainage area boundaries.

19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish and wildlife use, protection, conservation or management through physical or operational modifications of impoundments, within the areas designated in Appendix 4.

23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

25. "Groundwater" means any water that is beneath the ground surface.

26. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.

28. "Lonesome Lake Coulee" means the mainstem of Lonesome Lake Coulee and its tributaries in Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in Appendices 5 & 6.

29. "Lower Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

30. "Minimum Pool" means the quantity of water in an impoundment, as measured in acre-feet, or by the water surface elevation in feet above sea level, that is not available for release for designated water uses.

31. "MR&I Water" means water for use for municipal, rural, industrial, domestic, and incidental drought relief purposes on the Reservation.

32. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.

33. "Net Depletion" means the difference between the quantity of water diverted from a source and the quantity of water returned to the same source at or near the point of diversion.

34. "New reserved water rights" means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.

35. "Non-consumptive use" means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.

36. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.

37. "Parties" means the Tribe, the State of Montana, and the United States.

38. "Person" means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.

39. "Ratification date" means the date on which the Compact is finally approved by the Business Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

40. "Recognized under state law" when referring to a water right means a water right arising under

state law, but does not include water rights arising under federal law.

41. "Release" means (verb) to discharge water from storage, or (noun) the discharge of water from storage.

42. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in land which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.

43. "Sage Creek" means the main stem of Sage Creek and its tributaries in Water Court Basin 40C from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

44. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to wells and springs.

46. "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof.

47. "Stockwatering" means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.

48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified water rights without regard to relative priority dates.

51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once it becomes apparent that the primary supply will be unable to meet the full annual demand.

52. "Surface Acres" means the horizontal area in acres associated with the water surface in an impoundment when filled to the maximum capacity.

53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water

Right.

54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water Resources Department, or any successor agency.

55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's Reservation to divert, use, or store water as described by Article III of this Compact.

56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents and departments thereof.

57. "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof.

58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in Appendix 6.

59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently permeable to conduct groundwater and to yield water to wells and springs as shown in USGS Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 40H: Big Sandy Creek Basin.

1. Gravel Coulee/Lower Big Sandy Creek Drainages - 1690 AFY diversion - 1000 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for irrigation and non-irrigation purposes as set forth in Sections A.1.e. (1) and (2) of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and

fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

(2) Diversion. The Tribe shall have the right to divert or use or permit the diversion or use of [illegible] AFY of water from the following sources where they occur on the Reservation in any combination [illegible] the limits on each source and the total limit of 1690 AFY:

(a) Direct Flow. The Tribe shall have the right to divert or use or permit the diversion or use of [illegible] to 1690 AFY from the direct flow of Gravel Coulee and Lower Big Sandy Creek and its tributaries. [illegible] AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article IV without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 1690 AFY, the Tribe shall have the right to divert 1480 AFY from storage in Stoneman Reservoir for irrigation and non-irrigation purposes as more specifically provided in Sections A.1.e.(1) and (2) of Article III; provided that, the right to divert 1480 AFY from Lower Big Sandy Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Section A.6.a. and b. of Article IV. The right to divert 445 AFY from groundwater to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee and Lower Big Sandy Creek.

(ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of

September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big Sandy Creek and Gravel Coulee drainages on the Reservation.

e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

(1) Irrigation.

(a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for irrigation.

(b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for non-irrigation purposes.

(b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow, storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation within the Lower Big Sandy and Gravel Coulee drainages.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state

law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy Creek.

ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel Coulee and Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of origin.

2. Box Elder Creek Drainage - 6940 AFY diversion - 4800 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe, under Section A.2.e.(1) and (2) of Article III, has a right to divert for irrigation and non-irrigation purposes. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.

(2) Diversion. The Tribe shall have the right to use or permit the use of 6940 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 6940 AFY:

(a) Direct Flow. Of the 6940 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 6590 AFY from Box Elder Creek and its tributaries. 6310 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 6940 AFY, the Tribe shall have the right to divert a total of 6310 AFY from storage in one or more of the following reservoirs: Bonneau Reservoir, Brown's Reservoir, and any new impoundments for irrigation and non-irrigation purposes. The right to divert 6310 AFY from Box Elder Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance with Section A.6. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder Creek drainage.

(ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder Creek drainage.

(iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Box Elder Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic purposes.

(1) Irrigation.

(a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

(b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

(c) Place of use. The 6280 AFY may be used to irrigate 1930 acres at the Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 30 AFY of water in the Box Elder Creek drainage may be used for non-irrigation purposes.

(b) Source. The 30 AFY for non-irrigation purposes may come from direct flow, storage, or groundwater or a combination thereof in the Box Elder Creek drainage. The 30 AFY for non-irrigation use may be developed from either the shallow alluvium or volcanic bedrock aquifers.

(3) Municipal / Domestic.

(a) Volume. 350 AFY of water in the Box Elder Creek drainage may be used for municipal/domestic purposes.

(b) Source. The 350 AFY for municipal/domestic purposes may come from the following sources:

i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.

ii. 200 AFY from the volcanic bedrock.

(4) Stockwatering - Evaporative Loss. Use of the Tribal Water Right set forth for stockwatering in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 44 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 130 AFY for stockwatering may come from the direct flow of Box Elder Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Box Elder Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box Elder Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 280 AFY:

(1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the following proportions:

(a) 170 AFY from Duck Creek.

(b) 60 AFY from Camp Creek.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

(3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the Reservation, including groundwater that is hydrologically connected to surface water, in compliance with Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

(a) 40 AFY from Duck Creek.

(b) 10 AFY from Camp Creek.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp Creek and Duck Creek drainages on the Reservation.

e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

(c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek

drainages may be used in the drainage of origin on the Reservation.

(2) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.

ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not

exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of Camp and Duck Creeks.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

4. Gorman Creek Drainage - 60 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 60 AFY.

(1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman

Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the [illegible] right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwat[illegible] within the drainage of origin; and provided further that, the new point of diversion or place of use doe[illegible] change to a place from upstream of to downstream of, or from downstream of to upstream of the loc[illegible] of the point of diversion of a water right recognized under state law with a priority date before the dat[illegible] Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering a[illegible] consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundme[illegible] shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have [illegible] right to continuously store water in these impoundments.

(b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Cree[illegible] Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than [illegible] a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gorman Creek drainage may b[illegible] used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown [illegible] Appendix 7.

(2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and [illegible] wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a [illegible] change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the [illegible] Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; [illegible] and provided further that, the new point of diversion or place of use does not change to a place from [illegible] upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion [illegible] of a water right recognized under state law with a priority date before the date the Compact is ratified by [illegible] the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gorman Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

5. Upper Big Sandy Creek Drainage - 290 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 290 AFY.

(1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

(3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b. of Article IV.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that, the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This diversion limit also applies to any change(s) of use of this right.

e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the

date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on the Reservation.

(c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within the drainage of origin.

(2) Irrigation.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

(b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the Reservation.

(c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the Reservation.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage

may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Upper Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

B. Basin 40J: Beaver Creek Basin - 740 AFY diversion - 260 AFY net depletion - 665 AF continuous storage.

1. Quantification - Source - Volume.

a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek. Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork Reservoir for non-irrigation purposes set forth in Section B.5.a. of Article III; provided that, the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in

Sections B.5.b. and c. of Article III.

b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation up to the limits on each source and the total limit of 740 AFY.

(1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section B.5.a. of Article III without reducing the amount that can be applied to those purposes until such water is re-diverted from storage and applied to such purposes.

(2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

(3) Groundwater.

(a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5.a. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

(b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in B.1.a.(2) of Article III, shall not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5.a. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is not hydrologically connected to surface water.

2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

3. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver Creek drainage on the Reservation.

5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for non-irrigation purposes.

a. Non-Irrigation

(1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with Section B.1.c. of Article III.

(2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a combination of direct flow, storage and groundwater.

(3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the Reservation.

b. Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the

right to continuously store water in these impoundments.

(2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(3) Place of use. The Tribal Water Right for stockwatering in the Beaver Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of Beaver Creek.

(3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

C. Additional Development of Water.

In addition to the water rights specifically set forth in Sections A. and B. of Article III, the Tribe may develop water from the following sources:

1. Subject to Section A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding

any other provision of this Compact, may only be used in priority with other water rights.

2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of the new appropriation shall be the date of development and, notwithstanding any other provision of this Compact, may only be used in priority with other water rights; and further provided that, the maximum capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the stockwater right obtained pursuant to this section.

3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's annual report and will identify the water right acquired.

4. The Tribe shall be entitled to use any new reserved water rights that may be created with acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The priority date of the excess water shall be the date of acquisition of the land.

5. After the ratification date of the Compact, the Tribe shall have the right to acquire off-Reservation water rights separate from acquisition of the land to which such water rights are appurtenant; provided that, water from the Tribal Water Right is not available for economic or other reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to Sections A.4.b.(1) and (2) of Article IV.

6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this

Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

D. Proposed Decree.

For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III and Section A.8. of Article IV is attached as Appendix 1.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current and future water use and diversions will be identified by location and quantity. Final storage capacities will be based on project as-built plans, and will store no more than the water right set forth in Article III of this Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

3. Use.

a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, persons authorized by the Tribe.

b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

4. Change in Use or Transfer.

a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application of water-saving methods to expand irrigation, provided that:

(1) for each source quantified in Article III, any change in use or transfer shall not result in uses that exceed the water amount quantified for that source;

(2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;

(3) any change in use or transfer shall not have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer; and

(4) any change in use or transfer shall not change the source of the water involved in any such changes.

(5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek that results in a change in the place of use, point of diversion or place or means of storage of the water outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to

upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(7) The Tribe may make a change in use or transfer of the irrigation water right with a source in Upper Big Sandy Creek set forth in Article III so long as it does so within the diversionary limits set forth in Section A.5.d of Article III; provided that, the net depletion shall not exceed 30 AFY.

b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation of the water transferred; and provided further that, no transfer or change in place of use shall be made to a location outside the watershed that forms the Missouri River drainage; and provided further that, if the Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such rights at the same price and on the same terms and conditions as those contained in the offer. Any change in use or transfer of any such water right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal water rights described in this Compact shall not be deemed to convert such rights to rights arising under state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right set forth in this Compact without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

(2) Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water rights may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

(3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until such time as the statutory or common law of the United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.

c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year after the ratification date of this Compact. The initial survey method shall be through use of data obtained by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or greater than photography. The method may be modified by agreement between the TWRD and the DNRC. Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

d. Net Depletion Table. Net depletion for Tribal water uses in Beaver Creek drainage shall be as set forth in the table attached as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

5. Reporting requirements.

a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

b. On an annual basis the TWRD shall provide the State and the United States with a listing of all new development of the water rights described in this Compact, the net depletion in the Beaver Creek

drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfers of the water rights described in this Compact since the last report. The first report of the TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

6. Groundwater.

a. New Groundwater Development Without Adverse Effect.

(1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the ratification date of this Compact, the Tribe may develop or permit the development of groundwater provided that, such development is without an adverse effect on water rights recognized under state law with a priority date before the date of development of the new appropriation.

(2) Prerequisite Administrative Remedy. The following procedure for determining whether new development of groundwater will have an adverse effect on existing groundwater rights recognized under state law shall be followed prior to seeking relief from the Compact Board:

(a) Application for development of a groundwater use on the Reservation shall be made to the TWRD.

(b) The TWRD shall review the application and make a determination of whether the new use will have an adverse effect on existing water rights recognized under state law with a priority date before the application date. Upon request by the TWRD, the DNRC shall provide information on existing state water rights as recorded in the DNRC database to the TWRD.

(c) If the TWRD determines that the new development will have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall deny the application. If the TWRD determines that the new development will not have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall forward the application with its determination to the DNRC.

(d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit

according to the records of the department, has a water right with a priority date before the application date, and may be affected by the proposed development.

(e) DNRC and the TWRD should attempt to resolve any disagreement on the determination of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized under state law with a priority date before the application date disagree with the determination of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

(f) In any proceeding concerning the effect of new groundwater development on the Reservation either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

(i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses recognized under state law with a priority date before the application date.

(ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date before the application date shall bear the burden of showing any adverse effect to the water right.

b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following wells are exempt from the requirement of showing no adverse effect:

(1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices as per the requirement to list existing uses in Section A.5. of Article IV.

(2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.

c. Ancestral Missouri River Channel Aquifer. Groundwater from the Ancestral Missouri River Channel Aquifer shall be a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

7. Moratorium.

a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date

this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not intended to apply to applications for change in appropriation under state law.

(1) The moratorium shall not apply to the following appropriations:

(a) an appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation;

(b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream;

(c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface water.

(2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice of the moratorium once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on all appropriators of water or holders of permits who, according to the records of the department, have a water right with a source in the affected drainages.

(3) The moratorium applies only to new permits issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure in making a determination as to whether water is available in excess of the Tribal Water Right and rights recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

(1) Proceedings initiated by TWRD.

(a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

(b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC

shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for its determination.

(c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal

(2) Proceedings initiated by DNRC.

(a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to determine whether to lift a moratorium.

(b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such data within the same time frame.

(c) The TWRD shall be given sixty (60) days following receipt of the data in support of the proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any supporting data and argument.

(d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60) days of receipt of the Tribe's statement.

(e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal.

c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved water rights, if any, on land acquired after the ratification date of this Compact, but before the date the moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and may be transferred or stored pursuant to Section A.4.a. of Article IV.

d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or combined appropriation from two or more wells or developed springs in a single drainage defined by this

Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

8. Mutual Subordination. To reduce the need for daily administration of water use on and off the Reservation, water rights shall not be administered in priority, but shall be satisfied according to the following agreements.

a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right shall be subordinate to water rights recognized under state law upstream from any point on the Reservation with a priority date before the ratification date of this Compact. It is the intent of the parties that this subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-222, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected drainages. Appendix 3 may be modified due to clerical error or omission.

b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on downstream water rights recognized under State law has been mitigated by provisions of the Compact and by special measures set forth in drainage stipulations, any person claiming or holding a water right recognized under State law, or an interest in such water right, may not assert priority over, or make a call for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other forum.

9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of stockwatering.

10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife enhancement.

b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife enhancement zones on the map attached as Appendix 4.

11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic natural processes by allowing water to flow through the structure, or bypass the structure during filling.

B. Big Sandy Creek Basin.

1. Operation of Bonneau Reservoir.

a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240 acre-feet, if water is available. The next 240 acre-feet above the minimum pool shall be stored to satisfy the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from irrigation to other purposes shall be without adverse effect on downstream water uses recognized under state law with a priority date before the date of change, and measures to prevent adverse effect may include release of additional water from Bonneau Reservoir.

b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that, the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system; and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per year bypass set forth in Section B.1.c. of Article IV, and the minimum pool at all other times. The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to the use of on-Reservation conveyance and distribution systems to deliver this water.

c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured

near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water, once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all non-domestic and non-stockwater rights recognized under state law from the point of release to the confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as the boundary exists on the effective date of this Compact, during release of the 240 AF of water to downstream water users in the months of July and August. A structure that will bypass the peak scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows: Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being satisfied without the release, the Committee may, in any year, agree to forego the release. When streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV, exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by the Tribe, subject to the diversion limits designated in Article III.

Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c. of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

2. Water Use on Lower Big Sandy Creek Drainage.

a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions for all non-domestic and non-stockwatering water rights recognized under state law with a point of diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted by the Tribe subject to diversion limits designated in Article III.

b. Water Quality Issues.

(1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured on a quarterly basis to establish baseline conditions.

(2) Water Quality Monitoring Before Construction. Within one year following the effective date of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly sampling continued for a sufficient period of time to establish the water quality baseline conditions referred to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be used to establish a threshold value for water quality degradation associated with salinity which will trigger the requirement for more extensive study.

(3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate remedies. The analysis and recommendations may include sources of salinity off the Reservation.

(4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to issuance of an order to cease and desist the practice or practices leading to the salinity problems. The remedies set forth in this section shall be in addition to any remedies or water quality standards provided for under other applicable law.

C. Beaver Creek Drainage.

1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary. Location of the three gages shall be:

(1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;

(2) the confluence of the East and West Forks of Beaver Creek; and

(3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall also be installed in East Fork Reservoir following enlargement of the Reservoir.

2. Development of Management Plan. Based on the results of the five years of gage data on Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively to develop a fishery and recreational management plan. The plan may include modifications in minimum instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be deemed a modification of, this Compact. The management plan is not binding on any party and shall not be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department of Fish, Wildlife and Parks.

3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management

plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

a. The enlarged Reservoir shall be used only for recreational purposes during the five year moratorium. However, after the five year moratorium period and pending adoption of the management plan, the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth under Sections C.3.b., c., and d. of Article IV.

b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek if the flow at the confluence of East and West Fork or below the most downstream diversion on the Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and provided further that, the Tribe shall not be required to release water if the flow at the Reservation boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the following diversionary constraints are in effect.

a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass the structure year around.

b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the

Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round.

D. Enforcement - Chippewa Cree-Montana Compact Board.

1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree Business Committee; and one member selected by the other two members. If the Governor fails to select a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select the member. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:

a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in

advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between users of the Tribal Water Right and users of water rights recognized under state law including any contributor to a salinity problem. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Pre-requisite Administrative Remedy.

a. Any non-tribal water user concerned that a new development or change in use of water by the Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land to observe the challenged development or change in use.

b. The Tribe or any tribal water user concerned that a new development or change in use or transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD. If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged development or change in use or transfer.

c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint a technical expert for the purposes of Section B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs,

or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial *de novo*. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of other Indian tribes.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands other than those of the Chippewa Cree Tribe.

B. General Disclaimers.

Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

3. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Compact from any existing or future federal storage facilities off the Reservation.

8. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State; or

9. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights not protected by a drainage stipulation set forth in Appendix 2 of this Compact; provided that, the United States, on behalf of any other Indian tribe, or in its own right, may raise valid objections to any claims listed in Appendix 2 and Appendix 3 of this Compact.

10. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact.

11. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Tribe in the enjoyment of any water right in this Compact

C. Rights Reserved.

The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

E. Expenditures of Money Contingent.

The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

The Tribe and the State of Montana agree to support federal legislation ratifying this Compact that will accomplish the following:

A. Off-Reservation Water Sources.

1. Lake Elwell Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section C.6. of Article III. The priority date of this water right shall be that established for the source of supply. This water right will be held in trust and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have the right to participate in any project to augment the water supply in the Milk River system by transferring

from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe's water to a point on the Reservation designated by the Tribe.

B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic Development Fund.

The State and Tribe agree to support federal legislation that will authorize and fund a municipal, rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior (January, 1996), through either a regional system or a system serving the Reservation only. The State and Tribe further agree to support federal legislation that will establish an economic development fund as agreed upon by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional delegation. Support by the Department of Interior for the proposed MR&I system will depend on a demonstration of feasibility and appropriate allocation of costs.

C. Implementation Contingencies and Cost Share of Administration and Mitigation.

Implementation of this Compact shall be contingent upon the appropriation of necessary funds by the Congress and by the Montana Legislature. The performance of any obligation by any party under this Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost share for administration and mitigation necessary to implement the Compact to the Montana State Legislature and the Congress for appropriation on a schedule consistent with implementation as contemplated in this Compact.

1. The State and the Tribe agree to support federal legislation to appropriate $3,070,000 for the administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water Code.

2. The State and the Tribe agree to support state legislation to appropriate $150,000 for the following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

3. The state agrees to provide services, subject to the availability of funds, valued at $400,000 for administration required by the Compact and for water quality sampling required by this Compact.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, AND EFFECTIVENESS OF COMPACT

A. Ratification and Effectiveness of Compact .

1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become effective until the Reservoir is enlarged.

3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a party to this Compact -

a. if Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

b. if the municipal, rural, and industrial water supply system which the feasibility study identifies as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent system as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

c. if appropriations are not authorized by Congress, including appropriations for planning, design, and other pre-construction work on the municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

d. if appropriations are not made in the manner contemplated by the federal legislation authorizing

the Tribal municipal, rural, and industrial water supply system, or

e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later.

The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party, and the parties agree to resume negotiation in good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain in effect.

4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse support for federal legislation ratifying this Compact.

B. Incorporation Into Decrees and Disposition of Federal Suits.

1. The Tribe and the State agree to defend the provisions and purposes of this Compact including the quantification set forth in III, from all challenges and attacks in all proceedings pursuant to this Section B of Article VII.

2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation. If the court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal,

the Compact shall be voidable by agreement of the parties. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

C. Tribal Settlement of Water Claims.

The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, including rights to the future development of water pursuant to Section C. of Article III, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by

the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe, whichever date is later.

D. Binding Effect.

Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law; and further provided that, nothing contained in this Compact affects any claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons claiming water through any such other Indian tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States have signed this Compact on the _____ day of _____, 19___.

NEW SECTION. **Section 2. Provision exception.** Notwithstanding the provisions of 7-6-204, Hill County may apply the interest accrued on the $50,000 water purchase contract with the state of Montana toward operation, maintenance, and future repairs to the Lower Beaver Creek reservoir.

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN WILLIAM CRISMORE**, on February 17, 1997, at 3:00 P.M., in Room 405.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: Sen. Dale Mahlum

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB342, SB337, SB334 Posted Feb.12, 1997; SB346 Posted Feb.13,1997.
Executive Action: None

HEARING ON SB 342

Sponsor: SENATOR VIVIAN BROOKE, SD 33, MISSOULA

Proponents: Holly Franz, Mt. Power Co.
Jon Sesso, Planning Director, Butte/Silverbow Local Government
Robert Benson, Member of Clark Fork Steering Committee, Missoula
Audrey Asphom, Anaconda Local Government
Jim Quigley, Little Black Foot River Ranch
Jon Krutar, Rancher, Ovando

Closing by Sponsor:

SEN. BROOKE closed in saying that the committee had done a lot of work to bring the various interests together and to speak about a resource that was very near and dear to all of their hearts. She hoped the committee passed the bill and the amendments. She noted that the funding for the Steering Committee was from a RIT grant which resulted from the 1995 legislative session. **SEN. BROOKE** added that most of the committee members came here without compensation and the only benefits they receive is the reward for a job well done.

HEARING ON SB337

VICE-CHAIRMAN WILLIAM CRISMORE opened the hearing on SB337.

Sponsor: **SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER**

Proponents: **Gene Etchart, Montana Reserved Water Rights Compact Commission (MRWRCC)**
Paul Rosette Jr., Chippewa-Cree Tribe
Joe Mazurek, Attorney General, Dept. of Justice
Bud Clinch, Director, Dept. of Natural Resources
Barb Cosens, Legal Counsel, MRWRCC
Chris Tweeten, Chairman, MRWRCC
SEN. GREG JERGESON, SD 46
Tom Sheehy, Bear Paw Resource Alliance
Doug Kaercher, Hill County Commissioner
REP. TONI HAGENER, HD 90, Havre
Wayne Turner, Big Sandy
Max Maddox, Mt. Water Resources Assn., Representative of Irrigation Districts
Sen. Loren Jenkins, SD 45, Big Sandy
Dan Keil, Co-Chairman, Rocky Boys/North Central Mt. Regional Water System Coordinating Committee

Opponents: **None**

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, stated that SB337 was another water rights compact for settlement of the water rights of the Chippewa Cree Tribe of the Rocky Boys Indian Reservation. The purpose was to settle any and all existing water right claims of the Chippewa Cree Tribe and the State of Montana. He added that this bill was drafted the Compact negotiators versus the Legislative Service Division and he felt that the Tribe and the local water users were in support of this bill. He passed out Amendments to SB337 attached as **(EXHIBIT 2).**

Proponents' Testimony:

Gene Etchart, Glasgow, Member of Montana Reserved Water Rights Compact Commission, (MRWRCC), read his written testimony, attached as **(EXHIBIT 3).** He was a local rancher in the Glasgow area who utilized the Milk River for irrigation since 1923. He recommended a do pass for SB337 and believed that the Compact potentially solved a significant part of the adjudication puzzle in the Milk River Basin.

Joe Mazurek, Attorney General, Dept. of Justice, congratulated the negotiating team led by Gene Etchart on behalf of the State of Montana and Chairman Corcoran of the Tribal representatives. He stated that it was a major accomplishment when neighbors can get together and put forth the time and effort necessary to resolve differences. He emphasized that there was agreement and support from all sides of the water users involved, regarding this Compact. **Mr. Mazurek** thought it was important for the committee to understand that federal reserved water rights were discussed in the compact recently which involved federal agencies such as the Bureau of Land Management and the National Park Service. He added that the advantage of negotiations over litigation was the benefits of using the money to develop water projects that can be utilized by the current non-Indian users as well as for the future needs of the Tribe. He also assured the committee that the Attorney General's office had been involved from the very beginning in these negotiations.

{Tape: 1; Side: B; Approx. Time Count: 4;15; Comments: None.}

Bud Clinch, Director, Dept. of Natural Resources and Conservation, supported this bill both as the Director of DNRC and on behalf of the Administration. As authorized by the Water Use Act, the RWRCC negotiates compacts on behalf of the Governor. The Policy of the Governor is that the negotiations with Tribal Governments be on a government to government basis. The Compact Commission followed that policy and established a means to resolve disputes. The Compact also minimized the potential for future conflict over water use with the Rocky Boy Reservation. **Director Clinch** said that DNRC was involved in these negotiations at every step, and assured the Committee that the provisions of the Compact addressing implementation and dispute resolution were reasonable and appropriate for the area affected.

Barbara Cosens, Legal Counsel for RWRCC, handed out her written testimony which is attached to the minutes as **(EXHIBIT 4).** She stated that this Compact was a major setup toward resolving water rights in the Milk River Basin, a Basin prioritized by the Legislature for adjudication. She summarized the four basic elements of the Compact:

* Quantification of the Tribe's water right;
* Mitigation of the impact of development of the Tribe's water right on downstream water users;
* Administration and dispute resolution;

* Funding
She also mentioned that a lot of practical solutions that were in the Compact were formulated by Bill Greiman, agricultural engineer, and Bob Levitan, hydrologist.
Ms. Cosens closed in saying that the Commission believed that the settlement costs are relatively low, ($150,000 state request) to the state considering the lack of litigation cost, the added federal funding that will accompany the settlement, and the increased demands and costs of water allocation.
She then handed out: **(EXHIBIT 5)** A Fact Sheet on the Chippewa Cree Tribe-Montana Water Rights Compact
(EXHIBIT 6) Letters from Beaver Creek Water Users
(EXHIBIT 7) Letters from Big Sandy Water Users
(EXHIBIT 8) Milk River Resolutions
(EXHIBIT 9) Letter- Thomas Sheehy, Bear Paw Resources Alliance
(EXHIBIT 10) Letter- Hill County, verification of intent to sell the 800 acre feet of water out of the Beaver Creek Watershed to the State of Montana for the Compact Commission's agreement.
(EXHIBIT 11) Appendices

{Tape: 1; Side: B; Approx. Time Count: 4:35; Comments: None.}

Chris Tweeten, Chairman, RWRCC, stated that he wanted to address the objections that had been posed to the Compact by the federal government. He handed out a letter from **James Pipkin,** Counselor to the Secretary and the head of the Department of Interior's working group on Indian water right settlements. **(EXHIBIT 12)** He wanted to point out a few misleading statements in the letter. The first statement was regarding the revision and finalization of the Compact without seeking the input of the federal government. The second was the refusal of the State of Montana and the Tribe to consider the substantial changes that were proposed by the federal government. He said both statements were inaccurate. **Chairman Tweeten** gave a brief background on the federal involvement procedures with Indian water right settlements. He explained that there was an appointed Washington D.C. working team, made up of higher management federal employees, which then designated a local working group or negotiating team within the negotiating state. The federal working group is required to review all of the water right settlement proposals. A local federal team had been in place for the Rocky Boy's negotiation for a significant number of years, and their participation was helpful and very active in reaching this agreement. **Chairman Tweeten** said that the working team in Washington D. C. forced the local federal negotiating team away from the table into the sidelines during the last two years when the substantial agreements were being reached in the Compact between the State of Montana and the Tribe. When the federal working group finally authorized the federal team to come back to the table, near the end of the negotiations, they presented 35 proposed amendments and suggestions. Out of those 35, 26 were accepted by the parties in whole or in part. Therefore, **Chairman Tweeten** believed that the statement that the Compact rejected their comments is misleading. He handed out copies of the

correspondence between the State of Montana, the Tribe, and the federal working group in Washington D.C. **(EXHIBIT 13).** The Compact Commission in the correspondence asked the working group to allow the local federal team to return to the table. It was finally authorized to allow the federal team to return to the table along with 36 proposed changes. The changes that were not adopted basically fell into the category that required Congress approval anyway, therefore those matters were left neutral in the Compact. There were three issues of concern. The first issue was federal funding associated with outstanding cost share issues. The second issue raised was the relationship between the Compact and the drinking water supply. The Compact allowed the tribe to withdraw from this agreement if a drinking water supply was not provided within a set period of time. This issue was not settled as yet but was thought that Congress could determine the feasible alternatives for implementation of drinking water systems. The third issue concerned the approach taken by the State and the Tribe with respect to sovereign immunity for participation. Again, the Compact Commission felt it was best to leave it up to Congress.

Chairman Tweeten closed in saying that he believed that the parties were well satisfied with the agreement and urged the committee's support. He also noted that the Assiniboin and Gros Ventre Tribes from the Fort Belnap Reservation did not express their support for this agreement due to the fact that their water rights had not been quantified by a Compact. He also wanted to mention individuals that deserved additional credit for this agreement which included **Gene Etchart**, the Chair for the State Negotiating Team, and **Bob Larsen** from the DNRC field office in Havre, and **Barb Cosens**, the staff attorney.

SEN. GREG JERGESON, SD 46, said Rocky Boys Reservation was within his district and he had observed the progress of the negotiations and the hard work of all the parties. He tried to keep the local politics out of the negotiating efforts for the best interests of the Compact. He believed as a result of the Compact, good relationships and respect for one another was developed. He urges the committee to give this a favorable recommendation.

Tom Sheehy, President of Bear Paw Resources Alliance, wanted to make a point in mentioning the extent of their membership and the extent of their involvement in the water rights compact negotiation process. He reiterated the fact that when the compact was first proposed, there was a great deal of concern and interest in the area, and as a result of that concern, people banded together and formed a local organization which was named Bear Paw Resource Alliance. The alliance represents almost 100% of the water users in the basin who would be affected by this particular compact. The members had spent many hours attending all the compact negotiation sessions, meeting with the representatives of the compact team, and the compact staff. Bear Paw Resources Alliance, he said, now feels the modifications are such that they can support the compact and believed that it was

in the best interest of the water users, the Tribe, and the State of Montana.

Doug Kaercher, Hill County Commissioner, stated that he was involved in the compact for four years and the commissioners were fully prepared to sell the 800 acre feet of water to the State of Montana for the benefit of the compact and all the water users involved. A letter was presented for the Record. See **(EXHIBIT 10)**.

REP. TONI HAGENER, HD 90, stated she was a former county commissioner in the area and had been involved in the discussions regarding the compact. For all the reasons stated, she strongly supported SB337.

Wayne Turner, Big Sandy, said he was a landowner in the mid-reaches of Big Sandy Creek and was in full support of SB337.

Max Maddox, Milk River Valley, represented five irrigation districts between the Rocky Boys Reservation and Fort Belknap. He said the districts were in favor of this honorable compact and felt it was a good one. The districts hoped this could be a pattern for compacts to come with Fort Belnap. **Mr. Maddox** added that he was a member of the Board of Directors of the Montana Water Resources Association, and **Mike Murphy,** from the Association could not be at the hearing, but wanted to lend the support of the Montana Water Resources Association to the compact.

SEN. LOREN JENKINS, SD 45, said he was also speaking for **REP. RAY PECK,** who could not make it because of a bill he was presenting in another committee. **SEN. JENKINS** said he had watched this compact from the beginning to end and thought all the parties concerned should be commended for the job they have done. It was a true job of mediation between groups and hoped the committee recognized that and would give them a favorable consideration.

Dan Keil, Co-Chairman, Rocky Boys/North Central Montana Regional Water System Coordinating Committee, and Tiber County Water District, handed out a fact sheet on the Proposed Rocky Boys/North Central Montana Regional Drinking Water System **(EXHIBIT 14). Mr. Keil** was part of the committee that looked at the prospective public water supply system west of the Rocky Boys Reservation. He said the overall process was very much supported west of the Reservation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MACK COLE asked **Barbara Cosens** about the costs of the negotiations, and if any break down of costs had been done. **Ms. Cosens** said the budget for the Commission staff is about one-half million a year, but this also entailed other compacts

throughout the State of Montana. She said the compact had not been broken down or itemized but they could do that if requested.

SEN. COLE asked **Ms. Cosens** about if any estimates were done regarding litigation costs?
Ms. Cosens responded that the State of Montana has not had to litigate one of these so the costs are unknown. However, the litigation example in the Wind River of Wyoming had cost that state tens of millions of dollars with remaining complications.
SEN. COLE commented that it was a safe assumption that it costs less to negotiate than to litigate.
Ms. Cosens said it was far less expensive to negotiate.

SEN. COLE asked **Ms. Cosens** about if the 10,000 acre feet of water was available within the basin itself?
Ms. Cosens said that was correct. The water right from sources arising on the Reservation, both surface and ground water, was 10,000 acre feet.
SEN. COLE asked if it was correct that 10,000 acre feet of water would be imported from Tiber.
Ms. Cosens replied that the compact provided that the State and the Tribe would seek an allocation of 10,000 acre feet. of the Tiber in the Congressional legislation, but did not provide for importation of that water. She added that if a regional pipeline was put in, the Tiber would be the source for that water, then the Tribe's portion could go to supplying their drinking water. The estimate was that 2000 ac. ft. would supply drinking water needs. However, the compact did not provide for importation of that water.

SEN. COLE asked if it were correct that a lot of "ifs" still existed. **Ms. Cosens** replied that there were a number of issues as Chris Tweeten outlined, that had to be resolved in the Congressional Legislation.
SEN. COLE asked if there were any time limits or terms on these "ifs?"
Ms. Cosen said that the compact provides for periods of time within which a decree had to be entered after Congress ratified the compact and a period of time after that within which the Tribe has to be supplied with the drinking water. She said it did not have a set period of time between ratification by the Legislature and Ratification by Congress, which usually takes a few years.

SEN. COLE asked if the figures of $150,000 plus $250,000 were correct for the State's share of the compact.
Ms. Cosens stated that the $250,000 were in-kind services, and would be covered by existing FTE's, mainly services provided by the Havre Regional Water Rights Office. Previously, she referred only to the $150,000 grant. She added if that water system was put into place, local participating water districts might be coming to the Legislature down the road for grants and loans for their share. **Ms. Cosens** noted that these particular rural water

districts probably would be coming to the Legislature for money anyway for the necessary fixes for their systems.

SEN. COLE asked about the costs of the rural water districts.
Ms. Cosens said the feasibility study was not completed as yet, but the preliminary estimate would be anywhere from $30 Million to $90 Million.

SEN. COLE asked **Paul Rosette** about the Tribal federal sources of $3 Million, and what are the splits between the Tribe and federal?
Mr. Rosette stated that for all practical purposes those will be all federal funds. He felt that the cost was a legitimate cost and in all probability it would be funded through the Congressional Legislation.

{Tape: 2; Side: A; Approx. Time Count:5:00;}

SEN. COLE asked **Mr. Rosette** about the East Fork irrigation renovation and if it included both Bonneau and Stone Man Farms. He also asked how many acres were presently irrigated?
Mr. Rosette replied that the irrigation renovation did include both sites. He said that approximately 500 acres were irrigated on the reservation at the present time and approximately 2000 acres once all the expansion and irrigation operations are in place.

SEN. COLE asked about the cost for this tribal development.
Mr. Rosette said that those negotiations have not been finalized between the federal government and the Tribe. The Tribal Water Rights Negotiating Team has just begun the strategic planning process for developing that economic development fund.

SEN. COLE asked if the final negotiation was still a long ways off and was a successful negotiation correlated with obtaining the desired funding.
Mr. Rosette said the obstacle they encountered concerning the process of the negotiations had been the **Chief Negotiator** for the federal government, **Mr. John Duffy, U.S. Department of Interior.** **Mr. Duffy** was opposed to long term water sources for the Tribe concerning domestic purposes and was opposed to agricultural consumptive use of water on the Reservation. **Mr. Duffy** wanted to do away with agriculture on the Reservation and use that water for domestic purposes. **Mr. Rosette** said that since the compact settled the Tribe's water rights for all time, long term needs had to be be looked at for drinking water, irrigation, agriculture and recreation. **Mr. Rosette** believed that the federal government did not want to look at satisfying long term use for the Reservation.

SEN. MIKE TAYLOR asked **Mr. Tweeten** about the $310,000 requested for this biennium and about the federal dollars involved with the drinking water negotiations, and the other development projects.

Mr. Tweeten responded that the Dept. of Interior would probably sandbag the deal by not funding it. However, Congress would take a longer term view of these issues. He explained that there are programs that already exist in the federal government for funding tribal water right settlements. The Dept. of Interior's budget includes a revolving fund for funding projects such as the upgrading of the Bonneau Dam. The funding already exists, it would be a matter of getting a direction from Congress to the Dept of Interior to spend that money. **Mr. Tweeten** said with respect to the pipeline, the United States has a trust responsibility to the Tribes to provide for their drinking water needs and they are, he believed, willing to spend the money that is required to address the Tribe's drinking water needs in some fashion. The regional character of the pipeline system is where the government's objections have primarily arisen, he added. The municipalities within the state would be seeking loans and grants to acquire water from this system.

SEN. TAYLOR asked **Barb Cosens** about the allocation of the $15 Million and how much would the State of Montana have to appropriate to fund the pipeline?
Ms. Cosens clarified that the compact is seeking funds through Congressional authorization for the pipeline because of the scope of the system and the possibility to obtain the full funding. She said when we spoke of that program, we were thinking of the efforts of the individual water systems to renovate their systems in order to tie in. She did not have the costs broken down at this time, but she noted that we will not go to Congress with this bill until the feasibility study is completed and we have the full package with the drinking water system and the compact, which will be next summer sometime.

SEN. TAYLOR asked **Ms. Cosens** if she wanted the Legislature to pass it without having those final numbers?
Ms. Cosens replied that we have to take this step of getting legislative approval of the quantification in the compact before we can go to Congress. The Compact Commission did not discuss waiting and going to the Legislature later.

SEN. FRED VAN VALKENBURG questioned the lack of any representative of the federal government present. He brought up the past proposal of a trans-basin transfer, with a diversion point at Virgelle into Big Sandy Creek, and if this had any effect on this compact.
Mr. Tweeten replied that Virgelle is located on the Missouri River, south of the Reservation, and the idea presented by the Bureau of Reclamation was to divert water out of the Missouri and pipe the water to the Milk River, or as an alternative, dump the water into Big Sandy Creek and let it flow down to the Milk on its own accord. Discussions were made about that project with the BLM and the Bureau of Reclamation, he said, and there is little hope for that project to happen. The two points for transporting water from the Missouri River to the Milk River Basin that made this project very dubious were the high costs involved and the

significant water quality issue of natural occurring arsenic levels in the Missouri River.

Ms. Cosens added to **Mr. Tweeten's** comments that originally the Tribe had sought an additional allocation for 32,000 acre feet out of Tiber Reservoir that would then be part of that Virgelle diversion, if it ever happened. She noted that if sometime in the future, there is a project to import water to the Milk River, as with anybody else, they can participate in that project.

Closing by Sponsor:

SEN. LORENTS GROSFIELD, stated that these compacts were very complex and deserved careful inspection. He said he was on the State Negotiating Team and negotiated on this very compact during the very early stages. He recalled the first high tension meeting in Havre where 250 people, of various interests, came with their concerns. Since then, through the discussions of the negotiating process, an agreement was reached that represented the best interest of the tribes, the water users, and the State of Montana. **SEN. GROSFIELD** added that this compact, like many other compacts, had the unanimous agreement of the Compact Commission and the Negotiating Team. He hoped the committee would vote on this favorably.

{Tape: 2; Side: A; Approx. Time Count: 5:20; Comments: None.}

VICE-CHAIRMAN WILLIAM CRISMORE closed the hearing on SB337 and opened the hearing on SB334 and introduced **SEN. LORENTS GROSFIELD.**

HEARING ON SB334

Sponsor: SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Page Dringman, Pegasus Gold, Mt. Power Co.

Opponents: Richard Parks, Northern Plains Resource Council
Jim Jenson, Montana Environmental Info. Center
Debby Smith, Mt. Chapter, Sierra Club
Sen. Steve Doherty, SD 24
Wade Sikorski, Northern Plains Resource Council

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, distributed copies of ARTICLE IX regarding protection and improvement, Section 1, where three different terms were used. See **(EXHIBIT 15).** The new section 1 had three directives; through statutes and programs administering and enforcing the duty to maintain and improve a clean and healthful environment; through statutes and programs providing adequate remedies for the protection of the

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 19, 1997, at 3:00 p.m., in Room 405.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 356, SB 363; Posted 2/17/97
Executive Action: SB 322, SB 323, SB 332, SB 337, SB 342, SB 334, SB 253, SJR 7

HEARING ON SB 356

Sponsor: **SEN. STEVE DOHERTY, SD 24, Great Falls**

Proponents: **Peter Funk, Trout Unlimited**
Patrick Judge, Montana Environmental Information Center
Florence Orr, Northern Plains Resource Council
Debra Smith, Montana Chapter of the Sierra Club
Hope Stevens, Marysville
Pat Hettinger, Lewis and Clark Dept. of Health Missoula Dept. of Health Water Quality Protection District
Janet Ellis, Montana Audubon Society

implement. That's what this bill was for, i.e., attempting to implement the Article.

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: None.}

SEN. BROOKE. We're talking about an environmental issue here. Obviously, with interpretation of the constitutional frame, that you are trying to refine and define in statute. I'm very concerned about some of the other constitutional protections that I really value. I think a lot of times the majority can trample the rights of the minority, but that's why we have a Constitution - to protect the rights of the minority.

This bill is so broad to try to define and explain a particular Article of the Constitution. It really opens the door, and to one that would give me pause to say that the right to privacy includes everything except a woman's right to choose. As far as she can see, if we pass this bill, it opens the door for that kind of bill. That is not unlike a lot of the political mood of this particular legislature and probably a lot of other legislatures to come will consider that type of legislation. I think this is very dangerous. The constitutional protections are there for a purpose and for the courts to interpret and not for us to interpret. I think it's setting a pretty dangerous precedent.

Vote: SENATOR COLE's MOTION THAT SB 334 DO PASS CARRIED 6-4.

EXECUTIVE ACTION ON SB 337

Amendments: sb033701.amc **(EXHIBIT #13)**

Motion: SENATOR COLE moved that SB 337 DO PASS.

Motion: SEN. MCCARTHY moved the amendments.

Discussion: CHAIRMAN GROSFIELD. Amendments were provided out when this bill was heard. The Department made two editing corrections. Please mark them because they have the identical number as the previous amendments do, although this one is dated February 19. The differences between the two are in amendment 16, following "groundwater", we inserted a ",", and "to" is stricken and "the" is inserted. These were typographical errors. On #22 of the February 14 amendments it said "following: bypass", but should have said "strike: bypass" as it shows now.

CHAIRMAN GROSFIELD asked **Barb Cosens** from the Reserve Water Rights Compact Commission to indicate whether the February 19 amendments were correct, and whether it had been agreed to by all parties. **Barb Cosens.** This is the correct set of amendments, and all the parties have agreed.

Vote: SEN. MCCARTHY's MOTION TO ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY.

Motion: SEN. COLE MOVED THAT SB 337 DO PASS AS AMENDED.

Discussion: SEN. COLE. I reviewed the compact and asked a number of questions at the hearing. Although it's a good compact, it's not completely done, and I don't think it will be done for many years to come. There are a couple other compacts that the federal government still hasn't approved; however, I wholeheartedly recommend approval of the compact.

SEN. MCCARTHY. This is the first time I've been through this process, and I find it interesting. I thought the group that worked on it ought to be complimented of the complexity of the issues. Anyone who has been to the Rocky Boys Reservation realizes how poor it is. The fact that they're bringing good drinking water to people needs to be noted. That part of it alone makes the bill worth passing.

SEN. CRISMORE. I thinks this is the process we need to be using. I feel strong about it.

SEN. VAN VALKENBURG. I wanted to join those in commending the Chippewa Cree Tribe and the water users in the area of the Rocky Boys Reservation, in particular. Certainly we appreciate the efforts of our staff with the Reserved Water Rights Commission and the Department of Natural Resources, but they're paid to do that and that's part of their job. The water users and the Tribe have cone a long way from the description the Chairman and others provided at the outset here.

I am, however, disturbed by the attitude of the federal government at this point. The Chairman of the Commission, Mr. Tweeten, indicated in his response to the letter which the Chairman of the Committee received, under the signature of James Pipken, the Counselor to the Secretary of Interior, that he's not sure these people are dealing fully in good faith when they say they weren't given the opportunity to participate in the process. In actuality, they basically walked away from the process in the winter of 1995 until sometime in November of 1996.

I can't imagine how this compact could ever be approved by Congress if representatives of the State of Montana and the Chippewa Cree Tribe did not appear in front of the Congressional Committee that was considering a compact, and that's basically what the federal government did here. They stiffed us. They sent us a letter and said those are our objections. Nobody was here to answer a single Committee member's questions, if we had any, of the federal government.

Congress would not tolerate it if the State of Montana and the Tribe didn't bother to show up to answer their questions. I hope Congress will, as was indicated to us by the staff here and by Mr. Tweeten, do as they have done, for instance, in the Northern Cheyenne agreement. They, essentially, told the Department of Interior that its interest in protecting the trust relationship

with the Chippewa Cree Tribe is a good deal broader than the Department of Interior seems to think that it is, and would quickly appropriate funds to resolve this matter so there can be a compact here.

SEN. KEATING. I believe there is a requirement within the compact for a feasibility study concerning the transfer of water from the Tiber to the Milk River Basin, and that there is a $330,000 general fund appropriation for that feasibility study. So, if you're supporting this compact, remember that when you see the appropriation for $330,000 - it is a part of this agreement.

CHAIRMAN GROSFIELD. I appreciate **SEN. VAN VALKENBURG's** comments on the record. I think that once the minutes are done, they will be forwarded to the appropriate people. To some extent it becomes a question of the chicken and the egg and which comes first. Obviously, the state has to come first.

Montana would not fare well if we went to Congress and asked them to approve all this stuff, and then went home to see if we could pass a compact. That just would not happen, here or with the Northern Cheyenne or with the National Park Service, where we were dealing with money for controlled groundwater area.

We must act first, but in that process it would be helpful if the feds showed a bit more appreciation of our process. At the initial hearing I attended in Havre, at the beginning of this compacting process there was a lot of tension between tribal and non-tribal people. I commend the Tribal Water Resources Chairman and the local water users on the amazing working relationship they have developed through this process and you could all see it and feel it in the room here during the hearing. That's part of what negotiations will get you and what litigation probably doesn't get you. This is a good compact and I hope we can pass it unanimously.

Vote: SEN. COLE'S MOTION THAT SB 337 DO PASS AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 342

Amendments: sb034202.alm, sb034203.alm **(EXHIBITS #14 and #15)**

Discussion: CHAIRMAN GROSFIELD. We have two sets of amendments requested by **SEN. BROOKE.**

Motion: SEN. BROOKE moved sb034201.alm.

Discussion: SEN. BROOKE. Section 1 of the bill was a better section of law to amend or to add language to with regard to the augmentation plan, rather than just include it in the Basin closure. The amendment only applies to the Upper Clark Fork Basin closure. This ground water permit application is much

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on April 2, 1997, at 3:10 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: Rep. Carley Tuss (D)

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 337 (3/26), SB 342 (3/26)
Executive Action: SB 273 (18-0) DO CONCUR as AMENDED, SB 337 (16-1) DO CONCUR, SB 342 (16-0) DO CONCUR as AMENDED, SB 339 (16-2) DO CONCUR as AMENDED, SB 377 (18-0) DO CONCUR as AMENDED, SB 315 was discussed and Subcommittee is working on amendments executive action was further deferred until 4/4, SB 334 (10-8) was TABLED

HEARING ON SB 337

Opening Statement by Sponsor:
Sen. Lorents Grosfield, SD. #13 opened
{Tape: 1; Side: a; Approx. Time Count: 1.4; Comments: none.}

Proponents' Testimony:
Chris Tweeten, Reserved Water Rights Commission Compact opened by recognizing the other members of the RWRCC and their efforts in coordinating water compacts.
{Tape: 1; Side: a; Approx. Time Count: 5.8; Comments: none.}

Rep. Knox interjected that he had been made aware of a letter that was going to be sent to him with specific objections to this particular water compact.
{Tape: 1; Side: a; Approx. Time Count: 12.0; Comments: none.}

Chris Tweeten resumed his testimony.
{Tape: 1; Side: a; Approx. Time Count: 13.0; Comments: none.}

Joe Mazurek, Attorney General
{Tape: 1; Side: a; Approx. Time Count: 15.0; Comments: none.}

Susan Cottingham, Director of the Reserved Water Rights Compact Commission submitted **Exhibit #1 and #2** (#2 contains letters, maps and other information with regards to the Rocky Boy Compact and the area and people it will effect, the letters are in support of the parameters contained in the compact).
{Tape: 1; Side: a; Approx. Time Count: 19.1; Comments: Exhibit #1 & #2.}

{Tape: 1; Side: a; Approx. Time Count: end; Comments: flipped tape at the very end.}

{Tape: 1; Side: b; Approx. Time Count: 0.1; Comments: none.}

Rep. Matt McCann, HD #92
{Tape: 1; Side: b; Approx. Time Count: 6.4; Comments: none.}

Bud Clinch, representing DNRC & Governor Marc Racicot
{Tape: 1; Side: b; Approx. Time Count: 8.9; Comments: none.}

Paul Russette, Jr., Chippewa Cree Tribe, submitted **Exhibit #3 & #4**
{Tape: 1; Side: b; Approx. Time Count: 9.6; Comments: Exhibit #3 & #4.}

Doug Kaercher, Hill County
{Tape: 1; Side: b; Approx. Time Count: 12.5; Comments: none.}

Gene Etchard, MT RWRCC submitted **Exhibit #5**
{Tape: 1; Side: b; Approx. Time Count: 13.2; Comments: exhibit #5.}

Mike Murphy, MT Water Resources Association
{Tape: 1; Side: b; Approx. Time Count: 17.6; Comments: none.}

Tom Sheehy, Bear Paw Resources Alliance
{Tape: 1; Side: b; Approx. Time Count: 18.1; Comments: none.}

Tony Hagener, HD #90
{Tape: 1; Side: b; Approx. Time Count: 21.4; Comments: none.}

Lydia Sutherland, Chippewa Cree Tribe Council Member
{Tape: 1; Side: b; Approx. Time Count: 22.2; Comments: none.}

Bruce Sun Chill, Council Member of Chippewa Cree Tribe
{Tape: 1; Side: b; Approx. Time Count: 23.0; Comments: none.}

Opponents' Testimony:
no opponents testified

James Pipkin, Counselor to the Secretary, U.S. Department of the Interior, Office of the Secretary submitted a faxed letter in opposition to the Compact, marked **Exhibit #6**

Informational Testimony:
Rep. George Heavy Runner, HD #85
{Tape: 1; Side: b; Approx. Time Count: 23.5; Comments: none.}

Questions From Committee Members and Responses:
{Tape: 1; Side: b; Approx. Time Count: 27.2; Comments: none.}

{Tape: 1; Side: b; Approx. Time Count: end; Comments: flipped tape at the end.}

{Tape: 2; Side: a; Approx. Time Count: 0.1; Comments: none.}

Closing by Sponsor:
Sen. Grosfield closed
{Tape: 2; Side: a; Approx. Time Count: 7.1; Comments: none.}

Rep. Swanson proposes that the Committee take Executive Action on SB 337.
{Tape: 2; Side: a; Approx. Time Count: 16.1; Comments: none.}

EXECUTIVE ACTION ON SB 337

Motion: Rep. Story, DO CONCUR

Discussion: none, Question was called for

Vote: (15-1) Rep. Wagner voted no, SB 337 passes out of Committee, Rep. Story will carry the Bill on the House floor